

REMARKS

Claims 1-10, 14-19, 21, 22 and 26-38 remain in the application. By this amendment, claims 17, 29 and 30 have been amended, and new claims 31-38 have been added. The present application as originally filed supports these amendments. No new matter has been added.

Indication of Allowance

The applicant gratefully acknowledges the indication that claims 1-8, 10 and 14-16 will be allowed.

Claim Rejections Based on Moden et al.

Claims 17-19, 21-22, 27 and 29-30 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,013,298 to Moden et al.

Claims 17-19, 21-22 and 27

Independent claim 17, from which claims 18-19, 21-22 and 27 depend, recites an implantable access device comprising a port having an uncovered strike plate. Applicant respectfully submits that Moden et al. does not disclose or suggest a port having an uncovered strike plate and instead shows a port 10 having a plate 26 covered by a septum 16 and a top wall 34. Applicant, therefore, respectfully submits that independent claim 17 is neither anticipated by, nor rendered obvious in view of Moden et al. for at least these reasons. Since claims 18-19, 21-22 and 27 depend from independent claim 17, they include the limitations of the independent claim. As a result, the dependent claims also are not anticipated by, or rendered obvious in view of Moden et al. for at least the above reasons, and for reciting further patentable limitations. Applicant, therefore, respectfully requests reconsideration and withdrawal of the rejection of claims 17-19, 21-22 and 27 under 35 U.S.C. 102(e) as being anticipated by Moden et al.

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Claims 29 and 30

Independent claim 29, from which claim 30 depends, recites an implantable access device comprising a port having an uncovered strike plate. Applicant respectfully submits that Moden et al. does not disclose or suggest an implantable access device comprising a port having an uncovered strike plate. Applicant, therefore, respectfully submits that independent claim 29 is neither anticipated by, nor rendered obvious in view of Moden et al. Applicant requests reconsideration and withdrawal of the rejection of claims 29 and 30 under 35 U.S.C. 102(e) as being anticipated by Moden et al.

Claim Rejections Based on Moden et al. in view of Fenton, Jr.

Claims 26 and 28 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Moden et al. in view of U.S. Patent No. 5,178,612 to Fenton, Jr. The patent office has submitted that Moden et al. discloses all elements of claims 26 and 28 except for the use of stainless steel and a wing extending outwardly from the port, but that Fenton, Jr. discloses these additional elements.

Claims 26 and 28 depend from independent claim 17. As discussed above, claim 17 is neither anticipated by, nor rendered obvious in view of Moden et al. because Moden et al. does not disclose or suggest a port having an uncovered strike plate.

Fenton, Jr. also does not disclose or suggest a port having an uncovered strike plate, as required by independent claim 17. Thus, the combination of Moden et al. and Fenton, Jr. does not anticipate nor rendered obvious the subject matter of independent claim 17.

Since claims 26 and 28 depend from independent claim 17, they include the limitations of the independent claim. As a result, the dependent claims also are not rendered obvious over Moden et al. in view of Fenton, Jr. for at least the above reasons, and for reciting further

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limitations. Applicant, therefore, respectfully requests reconsideration and withdrawal of the rejection of claims 26 and 28 under 35 U.S.C. 102(e) as being unpatentable over Moden et al. in view of Fenton, Jr.

Election of Species

In response to the Office Action of August 20, 2002, the applicant elected the species of the claimed invention as shown in Figs. 4-6 for examination in the present application. Claims 9, 11-13, 20 and 23-25 were canceled as reading on the species of Figs. 7-8, Figs. 9-13 or Figs. 14-18.

In the present amendment, claims 9, 11-13, 20 and 23-25 are being reinstated as claims 31-38. Claims 31-34 depend from Independent claim 1, which has been allowed. Claims 31-34 should now be allowed as being dependent upon an allowed independent claim. Applicant respectfully requests an indication of allowance of claims 31-34.

Claims 35-38 depend from Independent claim 17. As discussed above, applicant submits that independent claim 17 is allowable. Claims 35-38 should now be allowed as being dependent upon an allowable independent claim. Applicant respectfully requests an indication of allowance of claims 35-38.

Objection to Drawings and Specification

The drawings and the specification have been objected to because the drawings and specification do not appear to show the sidewalls decreasing monotonically. It should be understood, however, that the sidewalls are not described as having to decrease monotonically. Instead, in the embodiment of FIG. 4, *a distance "d" between the side walls 122 decreases monotonically between the first and the second ends 108, 110 of the plate 104.* For example, the distance between the side walls 122 decreases monotonically between d_3 and d_1 , as shown in

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FIG. 4. (Although a port constructed in accordance with the present disclosure is not meant to be so limited. For example, in the embodiment of FIGS. 7 and 8 the side walls 122 are straight and extend parallel such that " d_3 " is substantially equal to " d_1 ".)

Applicant respectfully submits that the drawings and the specification show and describe every feature of the invention specified in the claims including a *distance between the opposing side walls* decreasing monotonically between the first end of the plate and the end walls.

Applicant, therefore, requests that the objection to the drawings and specification under 37 CFR 1.83(a) be reconsidered and withdrawn.

Conclusion

In view of the amendments and remarks submitted herein, applicant believes that all claims pending in the application are in condition for allowance and respectfully request such allowance. If a telephone conference will expedite prosecution of the application the Examiner is invited to telephone the undersigned.


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No fee is believed to be required; however, if a fee is required, or otherwise necessary to cover any deficiency in fees already paid, authorization is hereby given to charge our deposit account no. 50-1133.

Respectfully submitted,
McDermott, Will & Emery

Date: _____

9-3-03

A handwritten signature in black ink, appearing to read 'Mark G. Lappin', written over a horizontal line.

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